

International Law-Making



Articles of Agreement of International Monetary Fund

BACKGROUND

During the Great Depression of the 1930s, countries attempted to shore up their failing economies by sharply raising barriers to foreign trade, devaluing their currencies to compete against each other for export markets, and curtailing their citizens' freedom to hold foreign exchange. These attempts proved to be self-defeating. World trade declined sharply (see chart below), and employment and living standards plummeted in many countries.¹

This breakdown in international monetary cooperation led the IMF's founders to plan an institution charged with overseeing the international monetary system—the system of exchange rates and international payments that enables countries and their citizens to buy goods and services from each other. The new global entity would ensure exchange rate stability and encourage its member countries to eliminate exchange restrictions that hindered trade.

IMF has two goals: maintaining the balance of trade balance and maintain exchange rate stability are the two objectives that reflect and reinforce the globalization of trade liberalization with the implications. As for some of the implications of these two objectives, IMF is more to open trade between the member states that are expected to have a positive impact due to the existence of the state will have a wider choice in trading results of products and services or in other words, that have the import-export option that is wider so it is expected will strengthen its foreign exchange reserves. Furthermore, that market transparency will be promote the economic growth as will the increasing number of direct and indirect investments that will encourage the mobility of resources more efficiently, but this policy has a requirement that is needed the

¹ <http://www.imf.org/external/about/histcoop.htm>

transparency and democratic government in preparing a good investment climate such as the application of good law enforcement.

The second objective is to keep the stability of the expected exchange rate in order to keep the stability of international trade so that won't be any price distortions in the implementation of export and import. Furthermore, the balance of the payments imbalance will affect a State's foreign exchange reserves to finance debt currency demand for business transactions. As an example, when the monetary crisis attacked the Southeast Asia, IMF helped the States by providing financial assistance and other various technical assistances to gradually improve their economic performance.

CONCEPT

At 1944, Bretton Woods Conference initiated the International Organization Fund (IMF) to be formed, and then at the December, 28th 1945 IMF formally created by 29 countries as members. IMF's objectives are stated in the Articles of Agreement. As an organization that provides loans for the member States, IMF have it conditionality to set the policies that the IMF requires in exchange for financial resources. This conditionality is perhaps the most controversial aspects of IMF policies, and it was introduced in an Executive Board decision in 1952 and later incorporated in the Articles of Agreement.

ENTRY INTO FORCE

Article 31 Section 1 the Agreement stated that "The Agreement shall entry into force when it has been signed on behalf of governments having sixty-five percent of the total of the quotas set forth in Schedule A and when the instruments referred to in Section 2(a) of this Article have been deposited on their behalf, but no event shall this Agreement enter into force May 1, 1945."

The Section 2(a) mentioned in the paragraph above refer to the "Signature" Section, which is stated that each government, that represented their countries to signed the Agreement, shall deposit with the govern-

ment of the United States an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

Actually the Agreement officially entered into force at December 27th, 1945. And the last modification approved by the Board of Governors adopted April 28th, 2008. The IMF currently has a near-global membership of 188 countries. To become a member, a country must apply and then be accepted by a majority of the existing members. The last country that became member is Republic of South Sudan that joined in April 2012.²

MAIN FEATURES

Article 1 of the Agreement explained that the purposes of the IMF are:

1. To promote international monetary cooperation through a permanent institution which provide the machinery for consultation and collaboration on international monetary problems
2. To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy
3. To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation
4. To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade
5. To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity
6. In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments

² <http://www.imf.org/external/about/members.htm>

of members.

The subject matters that regulated in this Agreement are:

1. Membership (Article 2)
2. Quotas and payment subscriptions (Article 3)
3. Operations and transactions of the fund (Article 5)
4. Capital transfers (Article 6)
5. Replenishment and scarce currencies (Article 7)
6. General obligations of members (Article 8) and general obligations of participants (Article 22)
7. Relations with other international organization (Article 10) and relations with non-member countries (Article 11)
8. Transitional Arrangements (Article 14)
9. Special drawing rights (Article 15-20)
10. Withdrawal from membership (Article 26)

There are two mechanisms of emergency provisions according to Article 27 of the Agreement:

1. Temporary Suspension

When there is an emergency or the development of unforeseen circumstances threatening the activities of the fund, the Executive Board, by an eighty-five percent majority of the total voting power, may suspend for a period of not more than one year the operation of the provisions explained at Article 5, 6, 11, and Schedule C paragraph 5.

Then at the part (b), explained that the period of the suspension can be extended with the majority voting power until two years if it finds that the emergency or unforeseen circumstances continue to exist.

2. Liquidation of the Fund

In an emergency situation, if the Executive Board decides that liquidation of the fund may be necessary, it may temporarily suspend all operations and transactions, pending decision by the Board of Governors. If it happened, then the fund should forthwith cease to engage in any activities except those incidentals to the orderly collection and liquidation of its assets and the settlement of its liabilities, and all obligations of members under this Agreement shall cease except those who set out in this article.

Convention for the establishment of a European Space Agency

BACKGROUND

Humans are driven to explore the unknown and to unveil the mysteries of the universe. This desire has led to the development of space research and technology. What started out as a race between Soviet Union and the United States of America has now evolved into a global cooperative space market.³ Nowadays, many countries have invested enormous amount of money in space programs, including the Europeans. The European Space Research Organization (ESRO) and the European Organization for the Development and Construction of Space Vehicle Launchers (ELDO) were established in the same year, 1964. ESRO was a European cooperation in non military space research whereas ELDO was a European cooperation aimed to transform the French and British military projects into a civilian satellite launcher.⁴

By the beginning of 1970, ESRO had become a successful organization in the field of space research. ELDO by contrast had suffered technical failures, cost overruns and political disputes.⁵ The problem was that there was not sufficient expertise in launcher technology in Europe and no coherence between ESRO and ELDO, so the success of both these organizations was rather limited.⁶ Soon, they realized that space projects could not be attained on their own and hence they required a platform for a European space cooperative. On 31 July 1973, the European Space Conference confirmed the Resolution adopted by the European Space Conference on 20 December 1972 which decided that ESRO and ELDO would be merged into a new organization called the European Space Agency (ESA). ESA is expected to promote cooperation among European states in space research and technology.

³ Linnéa Elfving, "Europinoeers in Space: the Story of the European Space Agency," Thesis Master Lund University, Lund, 2014, p. 1.

⁴ Herman Matthijs, "The European Space Agency (ESA)," *American Journal of Social Issues and Humanities Vol. 3 (5)*, (2013), p. 2.

⁵ *Ibid.*

⁶ Tanja L. Masson-Zwaan, "Recent Development in EU Space Policy and Law," *Korean Journal of Air and Space Law, Vol. 25 (2)*, (2010), p. 232.

CONCEPT

This Convention intends to establish a single agency that aims to provide for and to promote, for exclusively peaceful purposes, cooperation among European States in space research and technology and their space applications whether for scientific purposes or operational space application systems.⁷ The intention to seek cooperation in space activities is set out in the preamble of the Convention: “The States parties to this Convention, CONSIDERING that the magnitude of the human, technical and financial resources required for activities in the space field is such that these resources lie beyond the means of any single European country”. Article II of the Convention lays down several means to achieve the purpose of ESA, such as:

- 1) by elaborating and implementing a long-term European space policy;
- 2) by elaborating and implementing space activities and programs;
- 3) by coordinating the European space program and national space programs; and
- 4) by elaborating and implementing an appropriate industrial policy.

All Member States are obligated to participate in the mandatory activities and contribute to the fixed common costs of ESA.⁸ Issues of general international space law, however, are not reflected in the ESA Convention. Nevertheless, ESA has made Declarations whereby it accepted the rights and obligations of the three principal treaties emanating from some of the principles of the Outer Space Treaty, notably the Rescue Agreement (Agreement on the Rescue of Astronauts, the Return of Objects Launched into Outer Space), the Liability Convention (Convention on International Liability for Damage Caused by Space Objects), and the Registration Convention (Convention on Registration of Objects Launched into Outer Space).⁹ The related decisions were unanimously approved by the ESA Member States, considering that the majority of them were parties to (or had signed) these international treaties, and acknowledging that the establishment of rules and procedures

⁷ ESA Convention, article II.

⁸ *Ibid.*, article I paragraph (3).

⁹ Frans G. von der Dunk, *Towards a European Space Agency, Mark II? The Space Program of the Former Soviet Union and the Commonwealth of Independent States*, (Lincoln: American Institute of Aeronautics and Astronautics, 1992), p. 176.

for outer space activities would contribute to the strengthening of international cooperation.¹⁰

ENTRY INTO FORCE

Article XXI of the Convention stipulates that the Convention shall enter into force when the former members of ESRO and ELDO¹¹ have signed it and have deposited their instruments of ratification or acceptance with the French Government. The Convention shall become effective on the date of the deposit of the instrument of ratification, acceptance or accession. By the enactment of the ESA Convention, the Convention for the establishment of ESRO and ELDO, therefore, shall terminate on the date of the entry into force of the ESA Convention.

MAIN FEATURES

The Convention contains 26 Articles and 5 Annexes that are integral part of the Convention. ESA Convention distinguishes between mandatory activities and optional activities for all ESA Member States in Article V. Mandatory activities are described as a set of activities to which all Member States are obliged to participate. They include: (1) basic activities such as education, documentation, studies of future projects and technological research work; (2) elaboration and execution of a scientific program including satellites and other space systems; (3) information collection and dissemination for the harmonization of international and national programs; and (4) regular contact with space techniques users to keep informed of their requirements.¹² Optional activities are activities in which all Member States participate apart from those that formally declare themselves not interested in participating

¹⁰ ESA Legal Services Department, “The European Space Agency as mechanism and actor of international cooperation,” (paper presented during the 53rd session of the UN COPUOS Legal Subcommittee, Vienna, 24 March – 4 April 2014), p. 17.

¹¹ The following States are mentioned in the Article XXI of the Convention: the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of the Netherlands, Spain, the Kingdom of Sweden, the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland.

¹² ESA Convention, *Op. Cit.*, article V paragraph 1 a.

therein. They include the design, development, construction, launching, placing in orbit, and control of satellites and other space systems, and the design, development, construction, and operation of launch facilities and space transport systems.¹³

ESA Convention not only assigns ESA to elaborate and apply an industrial policy appropriate to its programs,¹⁴ but it also lists the objectives of such policy: a cost-effective manner to meet the requirements of the European and the coordinated national space programs; improvement of the world-wide competitiveness of European industry; assuring that all ESA Member States participate (in ESA) in an equitable manner, having regard to their financial contribution; and free competitive bidding except where this would be incompatible with other defined objectives of the industrial policy.¹⁵

The organs of ESA are the Council and the Director General assisted by a staff.¹⁶ The Council is composed of representatives of the Member States¹⁷ whereas the Director General is appointed by a two-thirds majority of all Member States.¹⁸ The Director General functions as the chief executive officer of ESA and legal representative of ESA.¹⁹ The Council meets either at delegate level or at ministerial level.²⁰ Its working and voting methods are laid down in the Council Rules of Procedure.

It is only through the treaty-making power that ESA can be a fully-fledged actor in international space cooperation.²¹ ESA Convention expressly foresees the possibility to possess a limited treaty-making power in the Article XIV paragraph 1: "The Agency may, upon decisions of the Council taken by unanimous votes of all Member States, cooperate with other international organizations and institutions and with Governments, organizations, and institutions of non-member States, and con-

¹³ *Ibid.*, article V paragraph 1 b.

¹⁴ *Ibid.*, article II paragraph d.

¹⁵ ESA

¹⁶ *Ibid.*, article X.

¹⁷ *Ibid.*, article XI.

¹⁸ *Ibid.*, article XII paragraph 1 a.

¹⁹ *Ibid.*, article XII paragraph 1 b.

²⁰ *Ibid.*, article XI paragraph 2.

²¹ ESA Legal Services Department, *Op. Cit.*, p. 13.

clude agreements with them to this effect.”

ESA Convention also contains a dispute provision in Article XVII. Disputes between ESA Member States or between ESA and one or more of its Member States shall first be settled by or through the Council; as a second line of action, arbitration through a dedicated Arbitration Tribunal can be requested. The award of the Arbitration Tribunal shall be final and binding on all parties to the dispute.²²

²² ESA Convention, *Op. Cit.*, article XVII paragraph 6.

Organization of African Unity Charter

BACKGROUND

The Organization of African Unity Charter (The Charter) was signed by the Heads of African States and Governments on May 25th 1963 in Addis Ababa, Ethiopia. States who can join to the organization is only the Continental African States, Madagascar, and other islands surrounding Africa. The Organization of African Unity (OAU) was replaced by African Union (AU) which established on 26 May 2001 in Addis Ababa and launched on 9 July 2002. The rename of OAU to AU is not followed by replacement of OAU Charter.

CONCEPT

The main concept in OAU Charter is set in the Article II of the Charter, which are:

1. To promote the unity and solidarity of the African States;
2. To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;
3. To defend their sovereignty, their territorial integrity and independence;
4. To eradicate all forms of colonialism from Africa; and
5. To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

ENTRY INTO FORCE

The Charter enters into force immediately upon receipt by the Government of Ethiopia of the instruments of ratification from two-thirds of the signatory States. The signature itself was held on 25th May 1963.

MAIN FEATURES

The OAU Charter is consist of 32 Articles, those articles are:

1. Article I describes the establishment of Organization of African Unity;
2. Article II defines the purposes of the Organization and to make a harmonization about the general policies by its parties;
3. Article III defines the principle of the Organization, which are the party should affirm and declare their adherence of the principle;
4. Article IV describes about the membership of the Organization, that every independent sovereign African State can be the mamber;
5. Article V-VI explain the member shall enjoy the same rights and duties;
6. Article VII describes the institutions in the Organization, which are the Assembly of Heads of State and Government, the Council of Ministers, the General Secretariat, and the Commission of Mediation, Consiliation, and Arbitration.
7. Article VIII-XI describe about the Assembly of Heads of State and Government, the composition of the Assembly of Heads of State and Government, the vote by each party;
8. Article XII-XV describe about the Counsil of Ministers; the duty of the Counsil of Ministers, the vote by each party;
9. Article XVI-XVIII explain about the Secretary-General, how to appoint a Secretary-General, the functions and conditions of Secretary-General;
10. Article XIX is about the dispute settlement between the party of the Organization can settle by the Commission of Mediation, Conciliation, and Arbitration;
11. Articel XX-XII describe about the Special Commission of the OAU which consist of Economic and Social Commission, Educational, Scientific, Cultural and Health Commission, and Defence Commission. The special commission shall composed by the Ministers and the functions should be approved by the Council of Ministers;
12. Article XXIII defines about the budjet of the Organization;
13. Article XXIV is about the signature and ratification of the Charter and the possible language of the Charter;

14. Article XXV defines about the entry into force of the Charter by the ratification of the two-thirds of signatory parties;
15. Article XXVI is about the registration should do by the member of party to the Secretariat of United Nations after the ratification;
16. Article XXVII describe about the interpretation of the Charter shall decided by two-thirds of the Asembly of Heads of State and Government;
17. Article XXVIII describes how a member of the organization can do an adhesion or an accession;
18. Article XXIX-XXI describes about the language of the Organization are African language, English, France, and Portuguese. And describe about the council decides the privilege and immunity to the personnel of the Secretariat;
19. Article XXXII is the last article is about the Charter could be amandment or revised if the member States request to the Secretary-General.

Statute of International Atomic Energy Agency

BACKGROUND

Statute of International Atomic Energy Agency (IAEA) was approved by the Conference on the Statute of the International Atomic Energy Agency on 23 October 1956, which was held at the Headquarters of the United Nations.

The Statute is a comprehensive treaty regarding the establishment of IAEA (hereinafter referred to as “**the Agency**”), an agency focused on nuclear field worldwide to promote the safe, peaceful, and secure use of nuclear technologies.

IAEA is not one of United Nations specialised agencies, it is an independent international organization related to United Nations by a special agreement that has been concluded in United Nations General Assembly not in Economic & Social Council of the United Nations (ECOSOC).

The mission, strategic plans and the vision of IAEA is guided by the interests and needs of member States which can be defined in three main area of work: Safety and Security, Science and Technology and Safeguards and Verification.

CONCEPT

The objectives of this Statute, as set forth in the Article I, are:

1. to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world;
2. to ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.

ENTRY INTO FORCE

This Statute entered into force on 29 July 1957, after the fulfillment of the relevant provisions of paragraph E of Article XXI. This Stat-

ute has been amended three times, first amendment was on 31 January 1963, and the third amendment was on 28 December 1989, by application of the procedure in paragraphs A and C of Article XVIII.

MAIN FEATURES

This Statute consists of 23 Articles and 1 Annex regarding the Preparatory Commission, which are:

1. Article I–IV: those Articles describe the establishment, objectives, functions, and membership of the Agency. Based on Article III The Agency is authorized to encourage, assist, and foster on research, materials, services, scientific and technical information, including all of other works concerning nuclear field. Moreover, the members of the Agency are States Members of the United Nations or any of the United Nations specialised agencies;
2. Article V–VII: those Articles define the structure of the Agency or how the Agency works under General Conference, Board of Governors, and staff in the Agency. The Agency is going to meet in regular annual session or General Conference consisting of representatives of all members, it is different with Board of Governors that only compose on the Board of ten members most advanced in the technology of atomic energy including the production of source materials. The Director General will be the head of staff of the Agency and responsible for the appointment, organization, and function of the staff;
3. Article VIII–X: those Articles laid down the obligations of each Member of The Agency to make the scientific information, supplying of materials, services, equipment, and facilities available to the Agency;
4. Article XI–XIV: those Articles explain the assistance and requiring safeguards from Agency on projects for research and development of atomic energy for peaceful purposes also the reimbursement to the member for the items furnished;
5. Article XV–XVI: those 2 Articles define the privileges, immunities, and the Agency relationship with other organizations. Regarding privileges and immunities, it is related when the Agency exercises

its function, such as enjoying legal capacity in the territory of each member;

6. Article XVII: settlement of disputes in the Agency which cannot be settled by negotiation shall be referred to the International Court of Justice, unless the parties concerned agree on another method of settlement;
7. Article XVIII-XIX: those articles describe the procedure when any member of the Agency propose to amend or withdraw from the Statute.